SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1061

JAMES E. CURRY,

Petitioner,

v.

ROBERT E. SHER AND ABRAHAM J. HARRIS

REPLY BRIEF

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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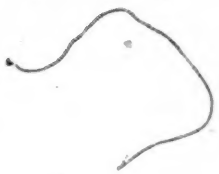

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ARGUMENT

General.

The most outstanding argument in Mr. Sher's December 31 Brief in Opposition is its last one. It "suggests" disciplinary action against me (*e.g.*, disbarment) for having written my Petition for Certiorari. If such an action is instituted, I expect to stand by my assertions. In such event, Mr. Sher's most strenuous arguments will be much more relevant than they are in this proceeding.

Mr. Sher also raises two new issues and for the first time makes several contentions. Under ¶ 4 of Rule 24, I am permitted to reply. But I must do so hurriedly (a) because under the Rules, the case may be decided without waiting for my reply and (b) because these lawyers keep me constantly and frenetically busy in another court.

I

WHETHER, AS HELD BY THE COURT OF APPEALS, THE DECISION OF THE DISTRICT COURT WAS NON-APPEALABLE

This issue was not argued and was not arguable in my petition. It should be argued to this Court if and when certiorari is granted. By arguing it in his opposition, Mr. Sher seeks to have it decided, as it was decided by the Court of Appeals, without giving me a proper opportunity to be heard.

He says[1] that "the decision of the court below dismissing the appeal was eminently correct." He says[2] that by electing to appeal instead of trying the issues raised by his irrelevant affidavit, I put myself "in the position of a defendant who, after denial of a motion to dismiss a complaint, stands on it and appeals." He cites at length. But they do not relate to the present issue.

This case does not involve a *complaint* which takes no man's property but a writ of attachment which does. Such writs are often called "judgments without trial."

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[1] Brief for Respondents in Opposition, page 3 lines 7 and 8.

[2] Same, page 3, last full paragraph.

The *Sniadach* decision held one unconstitutional because it "froze" a man's money without a chance to be heard. My money was "frozen" without a chance to be heard, without notice to me and even without compliance with the statute conferring jurisdiction for issuance of the writ.

II

WHETHER RESPONDENTS FILED ATTACHMENT AFFIDAVIT REQUIRED BY LAW.

Neither was this issue argued or arguable in my petition. I want to argue it, which is why I asked this Court to require that my appeal be heard. By arguing it here, Mr. Sher attempts to have another issue decided against me more-or-less *in absentia*.

He says[3] that he "filed the affidavit required by the D.C. Code. He quotes the provision of the Code.[4] It requires him to "state" under oath certain "facts" therein spelled out. It is true that Mr. Sher filed *an* affidavit. But it did not state the facts required by the law. Nor does he say in his Opposition that it did.

The attachment law is jurisdictional. It must be strictly construed. I have a hundred precedents holding that attachments like Sher's are null and void. I find none to the contrary and he has suggested none. I will argue this point when the time arrives. But if the writ is not granted, I may never have a chance to do so.

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[3] Same, page 2 line 18.

[4] Same, page 9, lines 1–9.

III

CONFLICT WITH DECISIONS OF THIS COURT.

Mr. Sher tries to distinguish the *Sniadach* decision.[5] He says:[6]

> Freezing a wage-earner's wages without hearing for an indefinite time which "may as a practical matter drive a wage-earning family to the wall" 395 U.S. at 341-2 is a far cry from the instant case where the attachment was levied on credits of the petitioner in the amount of $10,053 out of a total of $138,809 of said credit held by the garnishee.

He fails to mention that by other devices in the *Cohen* case, he has "frozen" and kept frozen under his personal control all the rest of about a half million dollars. This represents all sums due me for work over a quarter of a century. Retired and unemployed lawyers can be "driven to the wall," just as fast as wage-earning families by such harassments as I am now suffering.

In this case, as in *Sniadach*, the "freezing" was accomplished "without hearing for an indefinite time. It was also accomplished without service of summons, without notice to me, and without compliance with the jurisdictional provisions of the D.C. Code.

I do not understand that the benefits of the *Sniadach* decision are limited to any particular class of people.

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[5] *Sniadach v. Family Finance Corporation*, 305 U.S. 237, 23 L. Ed.2d 349, 89 S. Ct. 1820.

[6] Brief for Respondents in Opposition, page 5, footnote 2, second paragraph.

Whether they are so limited or not should be made explicit. For that reason, if no other, my petition should be granted.

IV

CONFLICT WITH ANOTHER CIRCUIT.

Mr. Sher also seeks to distinguish the *Baxter* case.[7] This case held such decisions as this appealable. It was denied review by this Court at about the same time as the *Smadach* decision. Sher says[8] that:

> There was no question of compliance with the state attachment law, the District Court taking the position that it was inapplicable.

That may have been the position that the District Court took. But the Circuit Court of Appeals held to the contrary. Mr. Sher in his very next sentence quotes that holding as follows:

> The question that makes this matter reviewable is whether the law permits a trial court to circumvent the Iowa law of attachment altogether. (406 F.2d at 1125)

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[7] *Baxter v. United Forest Products*, 406 F.2d 1120, cert. den. *United Forest Products v. Baxter*, 394 U.S. 1018, 23 L. Ed.2d 349, 89 S. Ct. 1920.

[8] Brief for Respondents in Opposition, page 5, ftn. 2, lines 6-7.

V

OTHER ISSUES

My petition was drafted in careful compliance with Rule 19. It makes four points as to three of which Mr. Sher makes no argument at all. These points also deserve the full consideration of this Court.

CONCLUSION

For the reasons stated in my petition, certiorari should be granted and the Court of Appeals should be required to hear my appeal on its merits.

Respectfully submitted,

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